IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2313 OF 2004

IN

SUIT NO.514 OF 1984

AND

NOTICE OF MOTION NO.224 OF 2005

IN

SUIT NO.514 OF 1984

...

Aderbad Co.op. Hsg.Soc.Ltd. ...Plaintiffs

v/s.

Dr.Aspi Framroze Golwala

and ors. ...Defendants

And

Mr.Rashid H. Irani & Ors. ...Respondents

...

Mr.C.S.Balsara with Mr.A.H.Gokhale i/b Ms.Rita

Bhatia for the Plaintiffs.

Ms.J.M. Sidhwa i/b L.C.Tolat & Co. for Defendant No.12.

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CORAM: D.K.DESHMUKH, J.

DATED: 24TH JUNE,2005

P.C.:

1. Notice of Motion No.2313 of 2004 is taken out by the Plaintiff and Notice of Motion No.224 of 2005 has been taken out by Defendant No.12.

2. Following are the admitted position:

(i) Defendant No.12 has been appointed as agent of the Receiver in relation to hoardings which were put up by Defendant No.12 on the north wall of the Aderbad Building;

(ii) It is also admitted position that when the repairs were carried out to the wall, pursuant to orders made by this Court, the hoardings put up by

the Defendant No.12 came to be demolished and presently there is no hoardings in existence.

(iii) In this situation, the Plaintiff has applied for cancellation of the order appointing the Defendant No.12 as agent of the Receiver on the ground that due to the order passed by this Court in Writ Petition the Defendant No.12 can not erect the hoardings because according to the Plaintiff it is a heritage precinct.

(iv) Defendant No.12 has taken out the Notice of Motion seeking permission of the Court to re-erect the hoardings. In my opinion, it will not be appropriate for this Court to decide whether the Defendant No.12 is entitled to re-erect the hoardings or not? That question can properly be decided by the Heritage Conservation Committee, and therefore, the Court will not be justified in cancelling the appointment of the Defendant No.12 as agent of the Receiver at this stage for the aforesaid reason.

2. In my opinion, following order would meet the ends of justice.

O R D E R

(a) In case the Defendant No.12 desires to re-erect the hoardings, he may apply to the Heritage Conservation Committee with due notice to the Plaintiff. Both the parties shall be entitled to appear before the Heritage Conservation Committee. The application to be made by the Defendant No.12 shall be considered and decided by the Heritage Conservation Committee in accordance with law.

(b) In case the Committee grants permission to the Defendant No.12 to re-erect the hoardings subject to the right of the Plaintiff to challenge the order passed by the Heritage Conservation Committee, the Plaintiff shall permit the Defendant No.12 to put up the hoardings subject to, of course, the Defendant No.12 complying with any condition that may be put up by the Receiver.

(c) In case the Heritage Conservation Committee does not grant permission in favour of the Defendant No.12, the Plaintiff shall be at liberty to apply to this Court for cancelling the agency of the Defendant No.12.

Both the Motions disposed of.

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